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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. 294

MYRA PAGE WIREN,
Petitioner,

against

SHUBERT THEATRE CORPORATION, *et al.*,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

MYRA PAGE WIREN,
By OSCAR B. WIREN,
Attorney for Petitioner.

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MAY IT PLEASE THE COURT:

The petition of Myra Page Wiren respectfully shows to this Honorable Court:

A

Summary Statement of the Matter Involved

This is a petition from the decision of the United States Circuit Court of Appeals for the Second Circuit dated May 13, 1942, denying petitioner's motion to recall the mandate and allow a reargument of the appeal on the ground that Judge Martin T. Manton who presided in the United States Circuit Court of Appeals for the Second Circuit on the hearing of said appeal was disqualified, which motion did not involve in any way the ultimate merits of the controversy between the parties.

Such disqualification is predicated on the following facts:

In May 1932 Albert D. Lasker, while a member of the Board of Directors of Paramount Publix Corporation (R. p. 32, fol. 40), one of the principal defendants in this action and which it is not denied was one of the most important clients of the advertising company of Lord & Thomas (R. p. 25—foot) which Mr. Lasker testified in the Louis Levy disbarment proceedings *was owned by him* (R. p. 5), made a loan of $250,000 to Judge Martin T. Manton (testimony on trial of Martin T. Manton) (R. p. 5).

During all of the years from 1931 to 1937, continuously and including the time when petitioner's appeal was pending in the Circuit Court of Appeals in 1934, Mr. Lasker handled all of the advertising business of Paramount Publix Corporation (at present Paramount Pictures, Inc.) with all of its subsidiary production, theatre chain and other enterprise companies (R. p. 25—foot). This involved a very large amount of money annually and Paramount was one of Mr. Lasker's most important clients. The business was actually handled by the advertising company of Lord & Thomas but Mr. Lasker testified as stated that *he owned Lord & Thomas.*

In 1926 Paramount Publix Corporation had taken over Mr. Lasker's entire chain of de luxe Chicago theatres, and the financial sheet of the New York Times for Oct. 31, 1931 (R. fol. 20), recorded that Mr. Lasker was buying heavily into Paramount, and that he had been selected as a director of the company.

Paramount refused to allow petitioner to examine the stock lists of the company (R. p. 50) which petitioner is informed and believes would show large stock holdings by Mr. Lasker in the name of some nominee, just as it was proved on the trial of Judge Manton that the quarter of a million dollar loan by Mr. Lasker to Judge Manton was

not made in Mr. Lasker's name but in the name of his company. Paramount states that it has no stock lists for the period in question and sets forth merely an affidavit of an officer to the effect that during a time prior to the period in question Mr. Lasker held only a small amount of stock in his own name and that it was after the commencement of the equity re-organization proceedings of Paramount that Mr. Lasker resigned as director.

While the appeal of the petitioner's case was pending before the United States Circuit Court of Appeals, and prior to the decision thereof, Mr. Lasker was pressing Judge Manton for repayment of said loan (testimony of Mr. Lasker on the Louis Levy disbarment proceedings) (R. p. 5) which repayment Judge Manton was unable to make (testimony on the trial of Martin T. Manton and set forth in the petition of U. S. Attorney Cahill in the disbarment proceedings) (R. p. 5), and with this loan still owing, and Judge Manton, being pressed, and unable to pay, in May 1934, the Circuit Court of Appeals (Judge Manton presiding, with Judges Swan and Chase) decided petitioner's case against the petitioner and in favor of Mr. Lasker's principal client Paramount Publix Corporation, and no part of the loan of $250,000 has been paid, nor any interest thereon, *and yet* Judge Manton did not list this loan among his debts.

While petitioner's appeal was pending before Judge Manton, William J. Fallon, who, as it was testified to, made the contacts and arrangements for the sale of Judge Manton's decisions, was owner of a large theatre ticket concern known as Tysons and well acquainted with the people of the theatrical and moving picture industry. Petitioner's case is for plagiarism, involving as admitted by defendants, a very successful play and motion picture with profits of several million dollars. Within a few months after Judge Manton decided petitioner's case, his financial status was miraculously rejuvenated to the extent of a million and a quarter dollars, as is shown from the following

facts: He testified at the U. S. Bank examination a few months before he decided petitioner's case in 1934, that all of his companies were insolvent and that his liabilities amounted to $750,000, but in May 1935 he made a sworn statement that all of his liabilities had been taken care of and that he was worth a half million dollars net, and still the $250,000 loan from Mr. Lasker was not and has never been paid nor any interest thereon (testimony on Judge Manton's trial, pages 671-686) (R. p. 7).

In answer to the government's questions concerning the large amounts of money that Judge Manton said came to his chambers during the time the petitioner's appeal was pending before him, he testified that $25,000 was brought to him by a "Robert Newman" whom he identified only as "a man in the theatrical business" and to whom no security was given. (Pages 748 and 749 of the record of Judge Manton's trial) (R. p. 7).

As evidence of Judge Manton's indebtedness to the motion picture industry generally, he testified that in September of 1933, after two cases (*Cinema Patents Co. Inc.* v. *Warner Brothers,* and *Cinema Patents Co. Inc.* v. *Duplex Motion Picture Industries, Inc.*) had been argued before him and Judges Swan and Chase, he went to the office of Harry Warner and obtained $50,000, and the next day the court affirmed the decision of the District Court against the plaintiff Cinema Patents Co. Inc. (Vol. 2, pages 787-790, Record of Judge Manton's trial) (R. p. 6).

The Circuit Court of Appeals which heard and decided the appeal in petitioner's case, consisted of Martin T. Manton, as presiding judge, and Judges Thomas W. Swan and Harrie B. Chase, and

The Circuit Court of Appeals which heard this motion of petitioner for a reargument of the appeal, consisted of Thomas W. Swan as presiding judge and Judges Charles E. Clark and Jerome F. Frank.

B

Petitioner respectfully urges that a writ of certiorari be allowed for the following reasons:

1. Because the Circuit Court of Appeals for the Second Circuit has, in denying a re-argument of the appeal, decided an important question of general law in a way untenable and in conflict with the weight of authority.

2. Because the Circuit Court of Appeals for the Second Circuit in denying a re-argument of the appeal, has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

WHEREFORE your PETITIONER RESPECTFULLY PRAYS that a writ of certiorari be issued out of this Honorable Court directed to the United States Circuit Court of Appeals for the Second Circuit commanding that Court to certify and send to this Court for its review and determination on a day certain to be named therein, a full and complete transcript of the records and all proceedings in this case, and that the order of the Circuit Court of Appeals for the Second Circuit may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

MYRA PAGE WIREN,
Petitioner.

OSCAR B. WIREN,
Attorney for Petitioner.